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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,304	02/13/2004	Sheng-Hc Huang	CIP2411A-SHH	7978
30265	7590	01/25/2006	EXAMINER	
RAYMOND Y. CHAN 108 N. YNEZ AVE., SUITE 128 MONTEREY PARK, CA 91754			PORTNER, VIRGINIA ALLEN	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 01/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/779,304	Applicant(s) HUANG, SHENG-HE	
	Examiner Ginny Portner	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>sequence examination</u> |

DETAILED ACTION

Claims 1-17 are pending.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-2, drawn to method of providing a nucleic acid sequence encoding *ibeA*, classified in class 536, subclass 23.7.
 - II. Claims 3-10, drawn to probiotic live bacteria, classified in class 424, subclass 93.45.
 - III. Claim 11-17s, drawn to prebiotics, classified in class 424, subclass 490.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Group II or III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions.
 - a. Group I is directed to a method of providing a complete nucleic acid of a pathogenic *E.coli*, Group II is directed to compositions of probiotic *live bacteria* that competitively prevent the establishment of *E.coli* infection and Group III is directed to prebiotics that do not encompass live bacteria, nor nucleic acid molecules but encompass sugar carbohydrate molecules that coat the lining of the gastrointestinal tract of a mammal. The reagents and methods steps of Group I do not encompass the probiotic bacteria of Group II, nor the prebiotic of Group III and therefore are directed to and encompasses components and reagents that structurally and functionally differ from each

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other thus defining independent and distinct inventions which evidence differing biological effects based upon the structurally and functionally distinct components/reagents of each Group. Groups I, II and III have different modes of operation, different functions, and different effects.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

General Observations

4. Figure 1, Figure 10, Figure 11A, B, Figure 12A, page 37, paragraph 1; Table 2 and Table 3 all need sequence identifiers provided or inserted at the location where the sequences appear that fall within the sequence rules to be in compliance with the sequence rules.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (571) 272-0862. The examiner can normally be reached on M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vgp

January 9, 2005

LLS
LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600